

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs January 28, 2009

ALFRED EUGENE BRADLEY v. STATE OF TENNESSEE

Direct Appeal from the Criminal Court for Hamilton County
No. 254328 Rebecca J. Stern, Judge

No. E2008-00829-CCA-R3-PC - Filed September 3, 2009

The petitioner, Alfred Eugene Bradley, filed a petition for post-conviction relief challenging his convictions of four counts of attempted first degree murder, aggravated arson, false imprisonment, assault, and theft under \$500. After a hearing, the post-conviction court dismissed the petition without entering a written order and without setting forth its findings of fact and conclusions of law with respect to each of the grounds raised in the petitioner's post-conviction petition. The State concedes that this case should be remanded to the post-conviction court for factual findings and entry of a written order. We agree and remand the case for entry of a final order in compliance with Tennessee Code Annotated section 40-30-111.

Tenn. R. App. P. 3 Appeal as of Right; Case is Remanded.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and D. KELLY THOMAS, JR., JJ., joined.

Ardena J. Garth, Richard Kenneth Mabee, and Jonathan Turner, Chattanooga, Tennessee, for the appellant, Alfred Eugene Bradley.

Robert E. Cooper, Jr., Attorney General and Reporter; Lacy Wilber, Assistant Attorney General; William H. Cox, III, District Attorney General; and Bates Bryan, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION
Factual Background

After a jury trial, the petitioner, Alfred Eugene Bradley, was convicted of four counts of attempted first degree murder, aggravated arson, false imprisonment, assault, and theft under \$500, and he received an effective sentence of twenty-two years and six months in the Tennessee Department of Corrections. This court affirmed his convictions on September 7, 2004, and the Tennessee Supreme Court denied permission to appeal on September 7, 2004. See State v. Alfred

Eugene Bradley, No. E2002-02840-CCA-R3-CD, 2004 WL 223399 (Tenn. Crim. App. at Knoxville, Feb. 5, 2004). The petitioner timely filed a petition for post-conviction relief on May 31, 2005, that was later amended with the assistance of counsel.

In his amended petition for post-conviction relief, the petitioner asserts that he was deprived of the effective assistance of counsel in violation of the Sixth Amendment to the United States and Tennessee Constitutions. He claims that his counsel was deficient because she failed to conduct a proper investigation, failed to impeach state witnesses, failed to investigate the petitioner's alibi, failed to object to hearsay evidence, failed to question one of the state's witnesses concerning her motive, failed to submit written reports of mitigating evidence and to develop mitigation evidence at the sentencing hearing, failed to raise a double jeopardy issue with respect to the petitioner's convictions for attempted first degree murder and aggravated arson, and failed to argue that the trial court's application of enhancement factors violated his constitutional right to a jury trial. See Blakely v. United States, 542 U.S. 296, 124 S. Ct. 2531 (2004).

The petitioner, his sister, and his trial counsel testified at the post-conviction hearing. At the conclusion of the hearing, the post-conviction court commented that trial counsel was "smart" when she did not question one of the State's witness about impeachment evidence because it was "minor." The court then summarily concluded that the petitioner received a fair trial and stated:

I think [trial counsel] worked very hard on [the trial]. She argues vehemently for her clients and always brings up the law and knows the law in the cases. . . . I think she was well within the range of competency. I don't think anything introduced by the petitioner today would have changed the outcome of this case given the overwhelming nature of the proof in this case. And so the petition is overruled and, slash, dismissed.

The post-conviction court made no other factual findings or legal conclusions, and the record does not contain an order or written memorandum disposing of the petition.

Analysis

Tennessee Code Annotated section 40-30-111(b) provides, "Upon the final disposition of every petition, the court shall enter a final order, and . . . shall set forth in the order or a written memorandum of the case all grounds presented, and shall state the findings of fact and conclusions of law with regard to each ground." See also Tenn. Sup. Ct. R. 28 § 9(A). "This requirement exists because a thorough explanation of a court's ruling is necessary in order for a reviewing court to evaluate the ruling." Michael Branham v. State, No. E2008-00404-CCA-R3-PC, 2009 Tenn. Crim. App. LEXIS 53, at *9 (Knoxville, Jan. 23, 3009); see also Isaac Earl Edgin v. State, No. M1999-01620-CCA-R3-PC, 2001 Tenn. Crim. App. LEXIS 91, at *7 (Nashville, Feb. 1, 2001). Additionally, the order granting or denying relief is deemed a final judgment from which an appeal may be taken. Tenn. Code Ann. § 40-30-116.

In the instant case, the post-conviction court failed to enter a final order or memorandum containing written findings of fact and legal conclusions. Moreover, the court did not orally pronounce sufficient factual findings to allow us to conclude that the court's failure to comply with Tennessee Code Annotated section 40-30-111(b) was harmless. See Tenn. R. App. P. 36(b); State v. Higgins, 729 S.W.2d 288, 290-91 (Tenn. Crim. App. 1987); Joseph Franklin Clark v. State, No. E2006-01171-CCA-R3-PC, 2006 Tenn. Crim. App. LEXIS 998, at **8-9 (Knoxville, Dec. 28, 2006). Accordingly, we remand this case to permit the post-conviction court to enter a final order or memorandum addressing all grounds presented with factual findings and legal conclusions in compliance with Tennessee Code Annotated section 40-30-111(b).

Conclusion

Upon review, we remand the case to the post-conviction court for further proceedings consistent with this opinion.

NORMA McGEE OGLE, JUDGE